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IN THE

Supreme Court of the United States

October Term, 1967
No. 1260

WYETH-SCOTT COMPANY, an Ohio Corporation,
vs. *Petitioner,*

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, *Respondent,*

DOROTHY MAE DRIGGERS, MARILYN KAY DRIGGERS, and KAREN LEE DRIGGERS, Minors, by DOROTHY MAE DRIGGERS, their Guardian *ad Litem;* DOROTHY MAE DRIGGERS, Administratrix of the Estate of Oscar Driggers, Jr., Deceased; B & B SUPPLY COMPANY, a California Corporation, *Parties in Interest.*

On Petition for Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District.

BRIEF FOR RESPONDENT B & B SUPPLY COMPANY IN OPPOSITION.

WILLIAM E. BURBY, JR.,
510 South Spring Street,
Los Angeles, Calif. 90013,
Counsel for Respondent B & B Supply Company.

Of Counsel:
BRILL, HUNT, DEBUYS & BURBY,
EDWARD A. DEBUYS, and
ABE MUTCHNIK.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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Parties in Interest.

On Petition for Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District.

BRIEF FOR RESPONDENT B & B SUPPLY COMPANY IN OPPOSITION.

B&B Supply Company ("Supply Company") designated by Petitioner as a "Party in Interest" respectfully files this brief, on its own behalf and for no other party.

Question Presented.

Whether Petitioner, a manufacturer of a product, many of which are regularly sold at retail in California by various California resident distributors, but sold to the distributors at wholesale, f.o.b. Petitioner's factory in Ohio, and then shipped to the distributors by Petitioner, is amenable to process in the California courts after a California resident is killed while using one such product, and his survivors, California residents all, bring an action for wrongful death in a California court, naming Petitioner as one defendant, and allege that Petitioner's product was defective and that this defect proximately caused decedent's death; and Supply Company, one of Petitioner's California distributors, who sold the allegedly defective product to decedent's employer at retail, files a cross-complaint in the same California court naming Petitioner as cross-defendant and alleging breach of warranty, negligence, and a right to indemnity; and all the witnesses to the decedent's accident are California residents—particularly under the circumstance that Petitioner has actually filed with the California court its answers to the plaintiffs' complaint and Supply Company's cross-complaint, in both of which pleadings Petitioner has denied liability, raised affirmative defenses and concluded with a prayer that the court give judgment to Petitioner that plaintiffs and Supply Company "take nothing" by their pleadings and Petitioner recover its costs of suit.

Statement.

Petitioner Wyeth-Scott Company manufactures a certain wire rigging tension device called the "More Power Puller" and sells hundreds of these pullers in California every year, through the facilities of various California distributors. One such distributor, in the Southern California area, is Supply Company.

The procedure followed by Supply Company is to order Petitioner's pullers, about 24 at a time, by placing either a telephone call or a written order for same to Petitioner's factory in Newark, Ohio. Thereupon Petitioner ships the pullers thus ordered directly to Supply Company's Southern California business location, f.o.b. Petitioner's factory, on 30-days' credit. For these pullers Supply Company pays Petitioner a wholesale price, which represents a stated discount off of Petitioner's suggested retail price for the pullers.

Supply Company sells Petitioner's pullers to its customers in Southern California at retail, at Petitioner's suggested retail price.

In 1965 Petitioner sold to Supply Company alone (and Petitioner has other California distributors) 258 pullers; in 1966, 252 pullers; and in 1967 (as last computed) 145 pullers—most of which have already been resold, at retail, by Supply Company to Southern California users.

Petitioner's acting president, Julius Lenz, in an affidavit dated December 5, 1967, has himself attested that in 1965 Petitioner had gross sales of its pullers

throughout the United States of $259,040.03; and that included in this amount were *California sales* of $13,-156.63—more than *five percent* of total sales (See Pet. p. 8).

Petitioner furnishes to Supply Company (and to other California distributors) without cost, for broadside distribution to prospective California customers for Petitioner's puller, fully printed advertising brochures and "mail stuffers", wherein are extolled the virtues of the "More Power Puller". On each piece of its advertising Petitioner affixes the rubber stamped name and address of each particular distributor (including that of Supply Company) to whom that advertising is supplied, thus inviting sales of the puller through the named distributor.

In its brief to the California Court of Appeal Petitioner made the following statement:

> "Petitioner gives his [sic] customers [distributors] certain brochures describing the product. These brochures are stamped with the independent distributor's name and the potential customer is directed to go to that distributor."

One of Supply Company's large Southern California retail customers for Petitioner's pullers is the Guy F. Atkinson Company; and prior to April 21, 1966 Supply Company sold to Atkinson one particular puller, amongst others.

On or about April 21, 1966 one Oscar Driggers, Jr., a California resident, and employee of the Atkinson Company, was working on an Atkinson job in Southern

California. It is alleged in the Declaration of Eric Julber, attorney for Driggers' wife and children (also designated by Petitioner as "Parties in Interest"); which declaration was filed in the within action below; that Driggers was using the one particular puller purchased by the Atkinson Company to exert a pulling force on a certain piling; and that: "As the force was exerted, the rigging tension device broke, causing the piling to snap and to hurl the deceased into the water, causing his death. Discovery proceedings taken thus far in the case indicate, according to the deposition testimony of engineering experts, that said 'More Power Puller' was incorrectly labeled as to capacity, and that the wire embodied in said rigging tension device was not of sufficient capacity for the device's advertised uses."

After decedent's death his wife and children brought a wrongful death action (which is the primary action herein) against both Petitioner, Supply Company and nine other defendants (Petitioner has stated in his Petition that there are 31 defendants; evolved by the doubtful technique of including in its calculation the 20 fictitious *Does* named in the complaint) in respondent Superior Court of the State of California, County of Los Angeles.

Thereafter Supply Company filed a cross-complaint against Petitioner; alleging breach of warranty, negligence and the right to indemnity.

Both the Driggers' complaint and Supply Company's cross-complaint were served on Petitioner

through the Secretary of State of the State of California, as authorized by California statute.

Thereupon Petitioner made a special appearance before respondent Superior Court (the trial court) and moved to quash service of the complaint and cross-complaint. After due hearing this motion was denied.

Then Petitioner sought a writ of mandate before the Court of Appeal of the State of California, seeking to compel the lower court to quash service. After due consideration the writ was denied.

Next Petitioner sought a hearing in the Supreme Court of the State of California; which was denied.

Thereafter Petitioner filed its answers to both the complaint and the cross-complaint with respondent Superior Court; wherein Petitioner denied all liability to both the plaintiffs and Supply Company, raised affirmative defenses and prayed the court for a judgment declaring that Petitioner had no liability in respect to the complaint and cross-complaint and awarding Petitioner its costs of suit.

Petitioner included in each of its answers to the said pleadings, as one purported affirmative defense, the following allegation:

> ". . . No further extensions of time or courts of resort remain to cross-defendant [and defendant] in the State of California and plaintiff and cross complainant threatens to take default and to cause the default of defendant in the above-entitled action. Under this threat and compulsion and only because of it, cross-defendant [and defendant] files an answer in the above-entitled action to the complaint and cross complaint but denies that this

court has any jurisdiction of this cross-defendant [and defendant] in this action. Cross-defendant [and defendant] appears under protest and not voluntarily."

In actuality, Petitioner never even applied to Supply Company or its counsel for an extension of time in which to answer the cross-complaint, so that Petitioner would have the opportunity to petition this Honorable Court before answering; and at no time did Supply Company or its counsel threaten Petitioner with a default in the event that it did not file its answer to Supply Company's cross-complaint prior to petitioning this Honorable Court.

Nevertheless, it is settled California law, both statutory and case precedent, that by filing its answers Petitioner has already made a general appearance in, and has subjected itself to the jurisdiction of, the California courts, despite its so-called "affirmative defense" whereby it purported to challenge the jurisdiction of these courts—such a "reservation" being accorded no efficacy by the California courts. Accordingly, Petitioner's within Petition is actually rendered moot.

All the eyewitnesses to decedent's accident, fellow workers, are likewise California residents.

ARGUMENT.

I.

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW AND NO CONFLICT OF DECISION.

Petitioner concedes in its Petition that it *regularly and not as an isolated incident* sells its product, the "More Power Puller", to California resident distributors; and that in 1965 such California sales approximated five percent of its national gross sales of the product:

> ". . . articles manufactured by Petitioner in the State of Ohio are sold by Petitioner in Ohio to cross-claimant B & B Supply Company and to other wholly independent concerns located in the State of California . . . all articles manufactured in Ohio are shipped to B & B Supply Company and other retailers located in California 'Free on Board, Newark, Ohio. . . .' " (Pet. p. 7).
>
> * * *
>
> ". . . of Petitioner's total gross sales of $259,040.03 in 1965, the gross sales to purchasers located in California totaled $13,156.63 . . ." (*ibid.* p. 8).

Likewise Petitioner concedes in its Petition that the within action involves California residents suing Petitioner in relation to an alleged defect in a product manufactured by Petitioner and sold in California to plaintiff's decedent, a California resident (Pet. p. 6):

> ". . . With respect to Petitioner, the complaint alleges that Petitioner manufactured and sold a certain device which, while it was being used on an artificial oil drilling island in tideland waters near

the City of Long Beach, California, on April 21, 1966, failed to function properly thus causing decedent to sustain bodily injuries which resulted in his death. . . ."

Further, Petitioner concedes in its Petition that in *International Shoe Co. v. Washington,* 326 U.S. 310, and *McGee v. International Life Insurance Company,* 355 U.S. 220, this Court held that the courts of a State have jurisdiction over a foreign corporation if that corporation has had a *"minimum contact"* with that State (Pet. p. 9).

And in connection therewith Petitioner also concedes in its Petition that the courts of various jurisdictions in applying the minimum contact rule of *International Shoe* have, "upheld service on foreign manufacturers of articles which allegedly caused injuries in the forum state"; and that, "Some courts, supposedly applying the principles of the *International Shoe* decision have gone so far as to hold that the minimum contacts for the requisite jurisdiction may result from a single transaction." (Pet. p. 14).

And in discussing the foregoing application of the "minimum contact" rule by the courts, Petitioner has gone so far as to cite in its Petition case decisions precisely factually in point with the cause at bar, in which it has been held that *if a foreign corporation's product is introduced into a State (even through the technique of selling the product f.o.b. the manufacturer's State) and that product proves defective and thereby injuries a resident of the State where introduced, and the resident (or his survivors) thereby brings an action in that State, and the eyewitnesses expected to testify at the trial are also residents of that State, these circum-*

stances fully satisfy the minimum contact requirement and serve to render the foreign corporation subject to the jurisdiction of the forum State and amenable to its process.

In one such case cited in the Petition, *Hearne v. Dow-Badische Chemical Company,* 224 F. Supp. 90 (S.D. Tex. 1963) also a wrongful death action, the defendant corporation manufactured a certain valve in Kansas and shipped it to Texas, where the plaintiffs' decedent was killed while using it. The defendant was served by substituted service and made a motion to quash. In denying the motion the trial court said, *inter alia,* at pages 99-100:

> ". . . I feel the State of Texas has a special interest in seeing that products delivered within its borders which are to be utilized in such a manner as to cause great hazard if negligently manufactured are sound and to this end is interested in providing a forum where actions may be brought to compensate its injured residents and thus encourage a high standard of care on the part of the manufacturers. . . ."

And in *Gray v. American Radiator and Standard Sanitary Corporation,* 22 Ill. 2d 432, 176 N.E. 2d 761 (1961) also cited in the Petition, the plaintiff in Illinois was injured while using a valve manufactured by the defendant corporation in Ohio, and the defendant made a motion to quash service of process, which was granted by the trial court. However, the Supreme Court of Illinois *reversed, with directions to the trial court to*

deny the motion to quash, and said, *inter alia,* at page 766:

> "As a general proposition, if a corporation elects to sell its products for ultimate use in another State, it is not unjust to hold it answerable there for any damage caused by defects in those products."

Indeed, Petitioner even concedes in its Petition, *page 14,* that in the following cases (cited by Petitioner) the courts have held a foreign corporation amenable to process following only a *"single transaction"* made by the corporation in the forum State: *Smythe v. Twin State Improvement Corp.,* 116 Vt. 569, 80 A. 2d 664, 25 A.L.R. 2d 1193 (1951); *Nelson v. Miller,* 11 Ill. 2d 378, 143 N.E. 2d 673 (1957); *Painter v. Home Finance Company,* 245 N.C. 576, 96 S.E. 2d 731 (1957); and *Hutchinson v. Boyd and Sons Press Sales, Inc.,* 188 F. Supp. 876 (D. Minn. 1960).

In truth, the only cases cited by Petitioner in its Petition wherein it was actually held that a foreign corporation defendant was *not* amenable to process in the forum State involved the circumstance that the corporation had only engaged in a "single transaction" in the forum state; in contrast to those, *supra,* where even a single transaction was deemed sufficient.

And indeed, when Petitioner's Petition is diagnosed it manifestly appears that Petitioner's only point of argument is that a conflict exists between those cases which hold that a "single transaction" in the forum State is sufficient to impart jurisdiction over a foreign

corporation; and those which hold that it takes more than such a "single transaction" (see Petition, p. 15). And, *urges Petitioner, this Court should "bring conformity to these decisions"* (Pet. p. 16).*

But, of course, at bar it is undisputed, and Petitioner has so conceded, that Petitioner's sale of the subject puller into California commerce was not an isolated transaction, but one of many hundreds of such sales.

Thus it becomes patently obvious that Petitioner has no standing here to urge that this Court should consider the issue of whether only a "single transaction" is sufficient to impart a State court's jurisdiction over a foreign corporation in relation to products liability; for as to Petitioner there is no such justiciable issue.

And it appears equally obvious that on the basis of the actual facts at bar Petitioner really has no quarrel with the ruling of respondent Superior Court in refusing to quash service of process upon it, and no ground upon which certiorari should, or could, be granted.

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*Of all the "single transaction" cases cited in the Petition only one is not expressly so identified: *Gill v. Surgitool Incorporated,* 64 Cal. Rptr. 207, 256 ACA 658; but it is such, of course. And in urging that this Court grant certiorari, Petitioner says in his Petition (p. 15):

> "The lack of consistency in the lower courts is underscored by the difference between the ruling of Division 4 of the California Court of Appeals (sic), Second District, on November 27, 1967, in *Gill v. Surgitool Incorporated,* 64 Cal. Rptr. 207 (1967), and the conclusion reached by Division 2 of the same court in the case at bar in February, 1968."

(Actually there is *no inconsistency*: *Gill* involves a "single transaction", while the cause at bar relates to Petitioner's product, as to which there have been multiple sales in California).

II.

THE DECISION BELOW IS CLEARLY CORRECT.

To make certain that no argument touched on by Petitioner is left unanswered, no matter how specious it appears, Supply Company observes that Petitioner appears to be suggesting, without expressly so stating, that it is the very fact that it sells its products f.o.b. its factory in Newark, Ohio, with title passing there (and Petitioner thereupon shipping the product to California) that makes it invulnerable to California process—and that California would have jurisdiction over Petitioner only if Petitioner instead retained title until the product reached California. Thus Petitioner says (Pet. pp. 7, 8):

> ". . . there is no consignment shipping by Petitioner nor any similar type of arrangement whereby Petitioner retains ownership of its products after they leave Newark, Ohio. . . ."

Clearly, however, Petitioner's contention in this respect is totally vacuous; and certain it is that such a distinction without a difference remains universally unrecognized by our courts.

Actually, *such an "f.o.b. arrangement" as Petitioner emphasizes, wherein title passes in the State of origin, exists in virtually every case which Supply Company has observed wherein it was held that a foreign corporation was amenable to process in the forum State:*

Thus in the following California cases cited by Supply Company to the two California appellate courts

here involved: *Cosper v. Smith & Wesson Arms Co.*, 53 Cal. 2d 77, 346 P. 2d 409 (1959) the leading California case in point, the allegedly defective product was sold f.o.b. Springfield, Illinois to a California distributor; *Regie Nationale des Usines Renault etc. v. Superior Court*, 208 Cal. App. 2d 702, 25 Cal. Rptr. 530 (1962) the allegedly defective product was sold f.o.b. France; *Sims v. National Engineering Co.*, 221 Cal. App. 2d 511, 34 Cal. Rptr. 537 (1963) the allegedly defective product was sold f.o.b. Illinois; *Thomas v. J. C. Penney Co.*, 186 Cal. App. 2d 223, 8 Cal. Rptr. 721 (1960) the allegedly defective produce sold f.o.b. New York; and *Waco-Porter Corporation v. Superior Court*,* 211 Cal. App. 2d 559, 27 Cal. Rptr. 37 (1963) the allegedly defective product was sold f.o.b. Illinois.

As to the cases in point *cited in the Petition*, wherein it was held that a foreign corporation was amenable to process: *Hutchinson v. Boyd and Sons Press Sales, Inc.*; 188 F. Supp. 876 (D. Minn. 1960) the allegedly defective product shipped into Minnesota was sold f.o.b. Michigan; *Gray v. American Radiator and Standard Sanitary Corporation*, 22 Ill. 2d 432, 176 N.E. 2d 761 (1961) the allegedly defective product shipped into Illinois was sold f.o.b. Ohio; and in *Hearne v. Dow-Badische Chemical Company*, 224 F. Supp. 90 (S.D. Tex. 1963) the allegedly defective product shipped into Texas was sold f.o.b. Kansas.

**Waco-Porter* is one of many "service on foreign corporations for products liability" cases which distinguish *Hanson v. Denckla*, 357 U.S. 235, upon which Petitioner herein purports to rely; as being not even remotely in point factually with such cases (See 211 Cal. App. 2d 559, 564-5).

As has theretofore been shown, with pertinent citations thereto, two of the cases cited by Petitioner itself in its Petition: *Hearne v. Dow-Badische Chemical Company,* 224 F. Supp. 90, and *Gray v. American Radiator & Standard Sanitary Corporation,* 22 Ill. 2d 432, 176 N.E. 2d 761, expressly hold that a foreign corporation whose product is introduced into a State and allegedly causes an injury to a resident of that State through a defect is subject to the jurisdiction of the forum state and amenable to its process.

Additionally, in making its decision affirming the judgment of respondent Superior Court herein refusing to quash service of process on Petitioner in respect to the complaint and cross-complaint, the Court of Appeal of the State of California; and in refusing to grant Petitioner a hearing, the Supreme Court of the State of California; each had before it, in support of its own ruling, numerous case opinions factually in point with the cause at bar. Following are a few such cases, together with a brief and pertinent citation from each:

Cosper v. Smith & Wesson Arms Co., 53 Cal. 2d 77, 346 P. 2d 409, wherein it is said at page 83:

> "It further appears that the gun which exploded was sold in this state, the accident occurred in this state, the plaintiff is a resident in this state, and many of the witnesses who will probably be called at the trial are present in this state. Therefore, in view of all the facts, we deem it not inconsistent with 'traditional notions of fair play and substantial justice' to subject the defendant Smith and Wesson to the jurisdiction of the courts of this state in this action."

Waco-Porter Corporation v. Superior Court, 11 Cal. App. 2d 559, 27 Cal. Rptr. 371, wherein it is said at page 566:

> ". . . When Waco-Porter for its own 'advantage' availed itself of the privilege of selling its product to a California distributor for resale, it knew, or could reasonably be expected to know, that the equipment would be used by persons in California; that if there was a defect in the equipment it might result in an accident to a person using the equipment in California; that if an accident occurred the witnesses to the facts surrounding the accident would be at the situs of the accident. . . ."
>
> "Certainly it is not unreasonable to require petitioner to do that which it reasonably should have expected to do, namely, defend an action of this nature at the place where (a) the equipment was used, (b) the defect became known, and (c) the damage was caused. . . ."

Regie National Des Usines Renault v. Superior Court, 208 Cal. App. 2d 702, 25 Cal. Rptr. 530, wherein it is said at pages 703, 704:

> "'. . . defendant . . . has had adequate contact with California and California residents so that the maintenance of suit against it does not offend our notions of fair play and substantial justice (*International Shoe,* [citation]). * * *
>
> "'Apparently, where the tort occurs within the state, extensive sales and promotional contacts with California consumers through nonexclusive, independent sales representatives may constitute "doing business".'"

III.

PETITIONER HAS FILED PLEADINGS WITH RESPONDENT COURT WHICH AFFECT AN ACCEPTANCE OF ITS JURISDICTION. THE ISSUE OF JURISDICTION, THE SUBJECT MATTER OF THE PETITION, IS THEREFORE NOW RESOLVED, AND BEFORE THIS COURT, MOOT.

On March 25, 1968 Petitioner filed with respondent Superior Court pleadings which constitute answers to the plaintiffs' complaint and Supply Company's cross-complaint; and *under California statute this filing constitutes a general appearance and a full acceptance of the court's jurisdiction.*

California Code of Civil Procedure, Sec. 1014, provides, *inter alia,* as follows:

> "A defendant appears in an action when he *answers,* demurs . . . or gives the plaintiff written notice of his appearance. . . ." (emphasis supplied).

In *Sampsell v. Superior Court,* 32 Cal. 2d 763, 197 P. 2d 739 (1948) the California Supreme Court said, at page 773:

> "The trial court unquestionably had jurisdiction over the parties, for by answering plaintiff's complaint on the merits defendant waived any claim of lack of jurisdiction over her. (Code of Civ. Proc. § 1014; *Jardine v. Superior Court,* 213 Cal. 301, 304 (2 P. 2d 756, 79 ALR 291)."

And in *Goodwine v. Superior Court,* 63 Cal. 2d 481, 407 P. 2d 1, 47 Cal. Rptr. 201 (1965) the California Supreme Court said, at page 484:

> ". . . An answer, a demurrer, and a motion to strike constitute a general appearance (Code Civ.

Proc., § 1014), since a court does not decide questions raised by such pleadings at the behest of persons over whom it has no jurisdiction . . ."

At bar it is true that in its answer to Supply Company's cross-complaint (as well as in its answer to plaintiff's complaint) following the allegations of general denial of any liability and other affirmative defenses; and preceding Petitioner's prayer for judgment in its favor and for its costs; Petitioner has also included in its pleadings, as another purported affirmative defense, *inter alia,* the following averment:

". . . No further extensions of time or courts of resort remain to cross-defendant [and defendant] in the State of California and plaintiff and cross-complainant threaten to take default. . . . Under this threat and compulsion and only because of it, *cross-defendant* [and defendant] files an answer in the above-entitled action to the complaint and cross-complaint but *denies that this court has any jurisdiction of this cross-defendant* [and defendant] *in this action. Cross-defendant* [and defendant] *appears under protest and not voluntarily."* (emphasis supplied).

However, despite Petitioner's self-serving attempt to dilute the effect of its having generally appeared because of its answer; by the said purportedly qualifying language; the fact remains that *under California law, once an answer is filed it constitutes a full acceptance of jurisdiction, regardless of any language therein which purports to challenge the jurisdiction. Accordingly, Petitioner is now fully subject to the jurisdiction of the California courts and amenable to its process.*

In *California Prune Etc. Assoc. v. H. R. Nicholson Co.*, 69 Cal. App. 2d 207, 158 P. 2d 764 (1945) the Court of Appeal of California said in affirming a judgment for the plaintiff, at page 225:

> ". . . By its answer it [defendant] denied nearly every allegation pleaded in plaintiff's complaint, and prayed for general relief. True it is that *by its pleading it attempted to limit its appearance as special.* It cites no authority supporting such procedure. . . . *Under the facts the defendant made a general appearance* and the contention which it now makes may not be sustained." (emphasis supplied).

And in *Hireen v. Interstate Transit Lines*, 52 F. 2d 12 (N.D. Calif. 1931) the defendant, also a foreign corporation, filed a demurrer and motion to dismiss with the Federal District Court, wherein it alleged that the court had no jurisdiction over it. The court in ruling on the demurrer and motion to dismiss *agreed* with the defendant that normally it would not have had jurisdiction; but held that *by filing the demurrer the defendant had, under California law, accepted jurisdiction;* saying at page 183:

> "In this case, however, I am of the opinion that even though the court did not have jurisdiction otherwise, it would now have so because the defendant has submitted to the jurisdiction of the court by filing a general appearance. . . . In the present case, I believe that the defendant has filed a general appearance by demurring on the grounds of lack of jurisdiction of the person of the defendant and also of the subject-matter of the action."

(A demurrer and an answer are equally considered to be a form of "answer" under California law (See, *Rio Del Mar Etc. Club v. Superior Court,* 84 Cal. App. 2d 227, 228, 190 P. 2d 306 (1948)).

*Accordingly it is settled that Petitioner already has, by filing its answers with respondent Superior Court, accepted the jurisdiction of that court; and that this Petition, now seeking certiorari purportedly to resolve the same question of jurisdiction, has come too late, and the entire matter is moot.**

CONCLUSION.

In *Hearne v. Dow-Badische Chemical Company,* 224 F. Supp. 90 cited by Petitioner, it is stated (as heretofore cited) that a forum State: "is interested in providing a forum where actions may be brought to compensate its injured residents and thus encourage a high standard of care on the part of the manufacturers."

Petitioner, however, makes it clear that it does not agree; and that as far as it is concerned, it would much prefer to escape process and responsibility altogether, regardless of the extent of defect present in its subject power puller or the degree of Petitioner's fault thereby —even if this means leaving some other defendant (including Supply Company) "holding the bag". In this respect Petitioner candidly says in its Petition, page 11:

> ". . . In this case, however, there are a number of substantial defendants against whom plaintiffs can properly proceed in the California courts."

---

*Petitioner has even still further accepted the jurisdiction of respondent court, by filing, on March 25, 1968, in the within action, a cross-complaint against Upson-Walton Company, manufacturer of wire rope allegedly used in the "More Power Puller".

Supply Company respectfully submits that even if this rationale constituted some support for Petitioner's Petition herein (and of course it does not, but is instead monstrous in its connotation) it still overlooks the fact of Supply Company's *cross-complaint, as to which Petitioner is the only named defendant.* If Petitioner were to escape the jurisdiction of respondent Superior Court there would then be *no* "substantial defendants" against whom *Supply Company* could "properly proceed in the California courts."

Respectfully submitted,

WILLIAM E. BURBY, JR.,
Counsel for Respondent B & B Supply Company.

Of Counsel:
BRILL, HUNT, DEBUYS & BURBY,
EDWARD A. DEBUYS, and
ABE MUTCHNIK.